Appendix rejected per Chief Justice's 10-24-11 Order - appendix stricken

No. 85591-9

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals No. 63438-1-I

LYNETTE KATARE,

Respondent,

v.

BRAJESH KATARE,

Petitioner.

Amici Curiae Brief on Behalf of the Fred T. Korematsu Center for Law and Equality, the Asian Bar Association of Washington, the Pacific Northwest District of the Japanese American Citizens League, and the Vietnamese Bar Association of Washington, in Support of Petitioner.

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IDENTITY AND INTEREST OF AMICI CURIAE

Amici curiae are the Fred T. Korematsu Center for Law and Equality, the Asian Bar Association of Washington, the Pacific Northwest District of the Japanese American Citizens League, and the Vietnamese Bar Association of Washington. Amici are dedicated to advancing the fair administration of justice and removing barriers to minority participation in the court system. Detailed statements of interest are attached to this brief as Appendix A.

ARGUMENT

I. Because Admitting Profiling Evidence that Discriminates on the Basis of National Origin Violates Due Process, Constitutional Harmless Error Should Apply.

A. Admitting Profiling Evidence that Discriminates on the Basis of National Origin Violates State and Federal Constitutional Rights.

The trial court violated Brajesh's due process rights by admitting profiling evidence that impermissibly based a propensity for abduction on his national origin. Injecting a litigant's race or national origin into a trial proceeding violates his due process rights because it calls for speculation based on his national origin rather than an evaluation based on his actions.

In United States v. Cabrera, the government's lead witness testified at length during a Cuban defendant's jury trial, making numerous stereotypes about how Cubans package drugs and evade law enforcement.

222 F.3d 590 (9th Cir. 2000). The Ninth Circuit reversed, concluding that "[a]peals to racial, ethnic, or religious prejudice" impermissibly violate an individual's due process rights and that the officer's testimony "had the cumulative effect of putting the . . . Cuban community on trial, rather than sticking to the facts of Cabrera['s] . . . drug offense[]."). Id. at 594, 596. Similarly, in Bains v. Cambra, the Ninth Circuit concluded that a prosecutor erred by appealing to racial and ethnic stereotypes about an Indian defendant. 204 F.3d 964 (9th Cir. 2000). Specifically, the prosecutor in this murder case made repeated claims that members of the Sikh religion become violent if female family members are wronged. The court concluded that those references "invited the jury to give in to their prejudices and to buy into the various stereotypes that the prosecutor was promoting." Id. at 974. "[U]nder clearly established federal law" this conduct violated the Fifth Amendment's due process clause. Id.

Like the evidence in Cabrera and Bains, the expert witness's testimony, in the words of the Court of Appeals, "was essentially akin to profile evidence, inadmissible in criminal proceedings." Slip. Op. at 21. The court went on to state that this type of evidence "identifies a group of people as more likely to commit a crime, and is inadmissible if it is used to lead to the conclusion that a defendant must have committed the charged crime because he shared the characteristics of known offenders." Id. at 21-

22. Like the testimony in Cabrera and Bains, the expert's so-called "red-flags," were actually ethnic stereotypes based on Brajesh's cultural ties to India that were used to make it appear more likely that he would abduct his own children. Id. at 22.

Injecting race and national origin into a trial also violates a litigant's state due process rights. In State v. Monday, this Court held that a prosecutor's appeals to racial prejudice constituted reversible error. 171 Wn.2d 667, 257 P.3d 551 (2011). During the trial, the prosecutor undermined the credibility of Black witnesses by claiming that "black folk don't testify against black folk." Id. at 674. The Court of Appeals acknowledged that the prosecutor "made a blatant appeal to racial prejudice," but nevertheless affirmed the conviction, reasoning that the error was "harmless." Id. at 675. This Court reversed, concluding that the racially-charged misconduct "fatally tainted" the proceedings, thereby depriving the defendant of a fair trial. Id. at 669. "[T]heories and arguments based upon racial, ethnic and most other stereotypes are antithetical to and impermissible in a fair and impartial trial." Id. at 678 (internal citations omitted).

Like the racially charged statements in Monday, this evidence was based on racial, ethnic, and national origin stereotypes, and violated Brajesh's due process rights.

B. These Constitutional Rights Apply with Equal Force in a Civil Proceeding.

The harms associated with discriminatory racial profiling are not limited to the criminal sphere. In Edmonson v. Leesville Concrete Co., Inc., a black construction worker sued a concrete company for negligence. 500 U.S. 614, 111 S. Ct. 2077, 114 L. E. 2d 660 (1991). During voir dire, the company used its peremptory challenges to strike black jurors. On appeal, the U.S. Supreme Court made clear that "[r]acial discrimination has no place in the courtroom, whether the proceeding is civil or criminal." Id. at 630. Indeed, a "civil proceeding often implicates significant rights and interests." Id. Civil adjudications, "no less than those of their criminal counterparts, become binding judgments of the court." Id. Congress, the Court explained, has "prohibit[ed] various discriminatory acts in the context of both civil and criminal trials. . . . The Constitution demands nothing less." Id. (citing, *e.g.*, 18 U.S.C. § 243 (prohibiting exclusion of jurors on account of race or color in civil and criminal proceedings)). "If our society is to continue to progress as a multiracial democracy, it must recognize that the automatic invocation of race stereotypes retards that progress and causes continued hurt and injury." Id. at 630-31. Therefore, every litigant, civil and criminal, has the right to have his issues "explored in a rational way that consists with respect for

the dignity of persons, without the use of classifications based on ancestry or skin color." Id. at 631.

This Court has made clear that it will not tolerate racial or national origin discrimination in a criminal proceeding. Monday, 171 Wn.2d at 678. There is no reason it should tolerate the same discrimination simply because it occurs in the civil context. The Court should use this opportunity to state clearly and unequivocally that race and national origin discrimination has no place in the civil context either.

C. The Court of Appeals Failed to Apply the Correct Standard of Review and Incorrectly Concluded that this Error Was Harmless.

1. The Court of Appeals Misapplied Harmless Error Review.

Constitutional harmless error review applies to constitutional errors in the trial process. State v. Brown, 147 Wn.2d 330, 341, 58 P.3d 889 (2002). "In order to hold the error harmless, [this Court] must 'conclude beyond a reasonable doubt that the [trial court's decision] would have been the same absent the error.'" Id. (quoting Neder v. United States, 527 U.S. 1, 19, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999)).

Accordingly, there are two rules embedded within the harmless error standard of review. First, there exists a rebuttable presumption that a constitutional error was harmful. Second, the beneficiary of that error – in this case, Lynette – carries the burden of proving beyond a reasonable

doubt that the error had no effect on the outcome. Put differently, this constitutional error is presumed harmful to Brajesh unless Lynette shows beyond a reasonable doubt that it was harmless. See Neder, 527 U.S. at 9; State v. Watt, 160 Wn.2d 626, 635, 160 P.3d 640 (2007) (constitutional errors are "presumed to be prejudicial" and placing the burden on the beneficiary to demonstrate harmlessness beyond a reasonable doubt).

It is not clear what standard of review the Court of Appeals applied. It appears that rather than applying constitutional harmless error, the Court of Appeals applied a lower, non-constitutional error standard. While the Court of Appeals explained that "the trial court . . . did not adopt [the expert's] risk factor analysis," Slip Op. at 22, the focus should not have been on whether the trial court explicitly adopted the improper profiles. Instead, the admission of the profiles should have been found to be presumptively prejudicial, and the proper question should have been whether Lynette demonstrated beyond a reasonable doubt that the error did not affect the outcome.

Moreover, to the extent the Court of Appeals applied a non-constitutional harmless error review, it committed two errors of law. First, the Court of Appeals effectively presumed that the error was harmless, rather than adopting a rebuttable presumption that the error was harmful. In fact, nowhere in its relatively terse treatment of this error does the Court

of Appeals ever mention that it is presuming the error was harmful. See Slip Op. at 22 (stating that "it appears" that the trial court "largely disregarded" the profiling evidence). Second, by focusing on other facts that conceivably could have justified the trial court's decision, the Court of Appeals erroneously placed the burden of proof on Brajesh to demonstrate that the error was harmful, rather than placing the burden on Lynette to prove that it was harmless beyond a reasonable doubt. See Slip Op. at 22-23 (accepting the trial court's statement that Brajesh's "testimony and conduct alone" justified the travel restrictions).

Because the Court of Appeals failed to apply the correct standard of review, it is impossible to tell from its opinion how the trial court weighed the profiling evidence or where the evidence entered the trial court's calculus. In hindsight, the Court of Appeals pointed to other evidence that *could have* justified the decision, and ended its inquiry there. But that is not harmless error review. Harmless error review does not ask whether there is sufficient evidence, absent the error, to support the verdict; harmless error review asks whether it is clear, beyond a reasonable doubt, that the error *had no effect* on the outcome.[1]

[1] For instance, in the criminal context, this Court applies the "overwhelming untainted evidence" test to determine whether a constitutional error was harmless beyond a reasonable doubt. State v. Watt, 160 Wn.2d at 635-36. If this test were applied here, in the civil context, the appellate court would "look[] only to the untainted evidence to determine if the untainted evidence is so overwhelming that it necessarily leads to a

For the reasons stated below, this Court should apply the correct standard and hold that this error was not harmless beyond a reasonable doubt.

2. This Error Was Not Harmless Beyond a Reasonable Doubt

Under the constitutional harmless error standard, this Court "will vacate a [disposition] unless it necessarily appears, beyond a reasonable doubt, that the misconduct did not affect the verdict." Monday, 171 Wn.2d at 680. During the hearing the expert not only testified as to risk profiles implicating Brajesh's national origin, he also described India as a primitive, dangerous, and lawless country, in order to buttress the claim that the consequences of an abduction would be severe. IX RP, p. 49. The expert even testified that if the children were taken to India, they may be attacked or harmed by other Indians if they were to accidentally hit a cow – an unveiled reference to Hindus and Muslims. Id. at p. 12. In fact, the only positive comment the expert had to say about India was also an ethnic stereotype: he testified that it is "common knowledge that India is a bastion of opportunity" for men like Brajesh who work in computer

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finding" that Brajesh will abduct his children. Id.; see also State v. Koslowski, 166 Wn.2d 409, 431, 209 P.3d 479 (2009). But the Court of Appeals did not apply this test. Here, the evidence was not so overwhelming, as indicated by the trial judge's wavering stance on whether she believed Brajesh would keep the children in India. See VI RP 10; App. B-3 ("I'm not persuaded, based on all the evidence presented, including that of the expert witnesses who were called to testify, that Mr. Katare presents a serious threat of abducting the children.").

science. Id. at 31. "*They* excel at that." Id. (emphasis added). And finally, the expert articulated various "red flags" that increased the likelihood that Brajesh would abduct his children, such as his Indian lifestyle and his interactions with other Indian Americans in Washington State. Id. at pp. 48-49. Because these blatant, explicit, and nakedly discriminatory stereotypes were used to show that Brajesh was more likely to abduct his children, this error was not harmless beyond a reasonable doubt.[2]

Indeed, the Court of Appeals' conclusion that this error had no effect on the subsequent decision is devoid of any analysis or application of the harmless error review standard. It is also inconsistent with the trial court's original decision to admit it. By denying Brajesh's motion to keep this evidence out, the trial court expressed a clear desire to hear the expert's profiling evidence. In this way, "the injury caused by the discrimination is made more severe because the government permits it to occur within the courthouse itself." Edmonson, 500 U.S. at 628. "Race discrimination within the courtroom raises serious questions as to the fairness of the proceedings conducted there. Racial bias mars the integrity of the judicial system and prevents the idea of democratic government from becoming a reality." Id. To admit discriminatory profiling evidence "in this official forum compounds the racial insult inherent in judging a

[2] For more examples of this expert's discriminatory testimony, *see* Brief of Amici Curiae in the Court of Appeals, at 12-14.

citizen by the color of his or her skin." Id.

While the Court of Appeals did acknowledge that the evidence was discriminatory, Amici assert that the evidence "crossed that line." Monday, 171 Wn.2d at 677. This evidence, once introduced, poisoned the framework of the proceedings. "[I]ntentional appeals to racial prejudices cannot be minimized or easily rationalized as harmless." Monday, 171 Wn.2d at 680.[3] The Court of Appeals' harmless error analysis did not attempt to quantify its impact.[4]

Contrary to Lynette's claims, Amici are not asking that the Court allow Brajesh to hide "behind the shield of discrimination."[5] Rather, all we ask is for the Court to denounce the sword of discrimination that was

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[3] This Court also should consider the calculus confronting Brajesh and all other immigrant parents in his position. A parent with strong ties to his culture may choose not to defend his right to travel with his children to his homeland because he knows that he fits the "profile" of a likely "abductor" – thereby stopping the proceedings before they start. Alternatively, a parent may choose to avoid these culturally-based "red flags" altogether by minimizing the ethnic and cultural ties he has to his home country. In this way, profiling evidence presents naturalized parents like Brajesh with a Hobson's Choice between abandoning their culture to avoid the red flags, or embracing their culture but not initiating proceedings to avoid the evidence that will likely be introduced against them. Harmless error analysis cannot easily quantify this cascading effect.

[4] For instance, an expert who is allowed to present race-based profiling evidence functionally shifts the burden onto the immigrant parent, like Brajesh, to prove that he would *not* abduct his own children, that he is *not* a future criminal, that he *can* be trusted to be a father – or *should* be trusted. The sleight of hand is subtle, but significant: Brajesh, based solely on his national origin, loses the benefit of the doubt that a non-immigrant parent with a similarly clean criminal record would never lose. "Perhaps more effective but just as insidious are subtle references. Like wolves in sheep's clothing, a careful word here and there can trigger racial bias." Monday, 171 Wash.2d at 678. Or, in this case, national origin bias.

[5] See Respondent's Answer to Amici's Brief in the Court of Appeals, at 3.

used to cut off an immigrant parent's children from half their culture. Amici know all too well about our country and state's unfortunate history when it comes to discrimination on the basis of race and national origin.[6]

Discrimination on the basis of national origin is of serious concern to Amici. Errors like this are rarely harmless, whether they occur in a criminal or civil proceeding, because "[i]f justice is not equal for all, it is not justice." Monday, 171 Wn.2d at 680. Appellate courts have a special duty to closely scrutinize these types of errors to ensure that they are not used as litigation tactics. But rather than rigorously applying constitutional harmless error analysis, the Court of Appeals' faux-review effectively rubberstamps the admission of profiling evidence, thereby increasing the probability that it will occur again.

Amici urge this Court to make clear that profiling individuals based on their national origin has no place in parenting plan adjudications. The Court of Appeals' decision should be reversed.

3. Reversal Would Be Consistent with this Court's Decision in Monday

[6] "Washington's early history included severe anti-immigrant sentiment expressed first toward Chinese immigrants and then Japanese immigrants, who were the target of the state's Alien Land Laws. . . . Washington State was hardly immune to racial bias. For instance, in March 1942, 14,400 persons of Japanese descent lived in Washington State, including 9,600 in King County alone. Of these, nearly 13,000 were incarcerated and placed into internment camps. Over 30% of those forcibly removed from Seattle never returned to their homes." The Task Force on Race and the Criminal Justice System, *Preliminary Report on Race and Washington's Criminal Justice System*, *5 (2011).

In State v. Monday the majority wrote,

> Defendants are among the people the prosecutor represents. The prosecutor owes a duty to defendants to see that their rights to a constitutionally fair trial are not violated. . . . A prosecutor gravely violates a defendant's [constitutional rights] when the prosecutor resorts to racist argument and appeals to racist stereotypes or racial bias to achieve convictions.

171 Wn.2d at 676 (internal citations omitted). This analysis applies as much, if not more, to judges. Here, the trial court owed a duty to Brajesh to see that his rights to a constitutionally fair process were not violated. The court "gravely violate[d]" this duty when it allowed appeals to racial stereotypes and national origin bias to be used by one party against another to achieve a certain result. Similar to the appeals to racial stereotypes in Monday, the stereotypes here were subtle, but "insidious." Id. at 678.

Additionally, reversal would be consistent with Chief Justice Madsen's three-judge concurrence. Writing separately, Chief Justice Madsen stated that "the injection of insidious discrimination into this case is so repugnant to the core principles of integrity and justness upon which a fundamentally fair . . . justice system must rest that only a new trial will remove its taint." Id. at 680 (Madsen, C.J., concurring). The concurrence cautioned that errors like this are not easily amenable to harmless error

analysis because there will often be an abundance of non-discriminatory evidence to justify the result. "Rather than engage in an unconvincing attempt to show the error here was not harmless," the concurrence advocated for a categorical rule against injecting racial discrimination into adjudicative proceedings. Id. at 682. The concurrence concluded that injecting racial discrimination into the courtroom is "'antithetical to the purposes of the fourteenth amendment . . . whether in a procedure underlying, the atmosphere surrounding, or the actual conduct of, a trial." *Id.* (quoting United States ex rel. Haynes v. McKendrick, 481 F.2d 152, 159 (2d Cir. 1973)).

Ultimately, eight justices in Monday agreed that injecting racial animus into a trial constituted reversible error. Amici urge this Court to apply its analysis from Monday to this case to conclude that appeals to racial stereotypes during parental custody proceedings violate the core principles of fairness underlying the adjudicative process.

II. Rulings on Foreign Law Are Mixed Questions of Law and Fact, and the Court of Appeals Committed Reversible Error When It Treated International Law as an Issue of Fact Alone.

Questions regarding international law are issues of law that are reviewed de novo. The Court of Appeals erroneously concluded that the trial court's foreign law conclusions are factual issues that merit deference

on review. By treating foreign law conclusions as factual issues, the Court of Appeals misapplied Washington law.

While foreign law is an issue of fact at the pleading stage, it becomes an issue of law on appeal. Foreign law must be pleaded as if it were a fact by the party relying on it. State v. Rivera, 95 Wn. App. 961, 966, 977 P.2d 1247 (1999). This pleading requirement places the responsibility of presenting the appropriate evidence on the party proposing the foreign law conclusion. Id. The *pleading* stage mimics factual pleadings. But although the pleading stage resembles factual pleadings, foreign law

> is not a true "fact" except in the procedural manner of its proof. Though foreign law is denominated as "fact" and is to be proven as such, the ultimate context and substance of the proposed foreign law is decided as an issue of law. The gist thereof should be set forth as a conclusion of the trial court, and the conclusion is reviewable.

Byrne v. Cooper, 11 Wn. App. 549, 553, 523 P.2d 1216 (1974) (citing State v. Jackovick, 56 Wn.2d 915, 355 P.2d 976 (1960)).

Thus, whatever conclusion the trial court makes as to foreign law should be treated as a conclusion of law – reviewable *de novo*. This mixed treatment is pragmatic. On the one hand, foreign law is a factual question to the extent that the party claiming it must present the research and

evidence to support the pleading. Id. at 555. On the other hand, once the evidence has been presented "it is not in its essential nature a fact any more than domestic law is a fact." Id. (internal citation omitted). A trial judge's foreign law conclusions are treated as if they were domestic law conclusions – that is, in the event of a jury trial, the judge would consider the evidence in the jury's absence and "instruct the jury on the foreign law in the same manner that he would instruct on local law." Id.

Here, the trial court misread Exhibit 25 to conclude that "proceedings in India do not include summary proceedings." CP 156. In fact, India's constitution allows for a writ of habeas corpus to issue to return an abducted child to his country of residence. Ex. 25, p. 111. Additionally, Exhibit 25 misstates the holding in Dhanwanti Joshi v. Madhav Unde (1998) 1 SCC 112, which explains that summary proceedings are available. Because the Court of Appeals deferred to the trial court's erroneous conclusion that Indian law does not include summary proceedings for abducted children, its holding is completely at odds with how Indian law operates. Unless this Court corrects this error, other parents of Indian descent will suffer from similar difficulties because the non-Indian parent would be able to point to the Court of Appeals' decision explicitly denying that summary proceedings exist in India. Amici's Memorandum in Support of Petition for Review further outlines

the trial court's inaccurate characterizations of Indian law.

The Court of Appeals erred by failing to realize that the trial court's erroneous conclusion regarding Indian law was subject to de novo review like any other legal finding. This Court should make clear that a trial court's foreign law conclusions are subject to the same standard of review that applies to state law conclusions.

III. The Lower Courts' Decisions Place Too Much Emphasis on Whether a Country Is a Hague Signatory, Rather than Whether a Country's Internal Procedures Provide Adequate Protection.

The trial court relied too heavily on the fact that India is not a Hague signatory. Placing undue reliance on whether a country is a Hague signatory allows for national origin to affect family law decisions in an arbitrary manner. This issue is a serious concern, especially for Amici, because most countries that have not signed the Hague Convention are in Asia and the Middle East. Although Amici brought this issue to the Court of Appeals, it never addressed it – other than noting that Amici brought it up. **Slip Op. at 17.**

By using India's non-Hague status as a reason to impose the travel restrictions, the trial court effectively adopted a bright-line rule that parents from non-Hague countries face a higher burden of proof to demonstrate that they will not abduct their own children. This rule unnecessarily penalizes a law-abiding parent and "border[s] on

xenophobia, a long word with a long and sinister past." Abouzahr v. Matera-Abouzahr, 361 N.J. Super. 135, 156, 824 A.2d 268 (2003). This bright-line rule focuses the court's attention away from a particular country's internal procedures regarding child abductions.[7]

Additionally, the court's undue reliance on India's non-Hague status allows a court to use the mere possibility of a worst-case scenario against a parent, without considering how low that probability truly is given the parent's ties to the United States. See Long v. Ardestani, 241 Wis. 2d 498, 525, 624 N.W.2d 405 (2001) (rejecting the argument that "because the harm to the children if they were retained in Iran would be so devastating, the mere possibility of that occurrence was sufficient to prevent Ardestani from taking the children to Iran, regardless of the likelihood of that occurrence").[8] Rather than focusing on the worst-case

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[7] In fact, other state courts have allowed parents to take their children to countries that are not Hague signatories. See In the Matter of Rix, 161 N.H. 544, 548-49, 20 A.3d 326 (2011) (allowing father to take child to India, despite mother's claims that India is not a Hague signatory, because father has deep financial ties to the United States and has lived here for twenty years); Abouzahr v. Matera-Abouzahr, 361 N.J. Super. at 157 (allowing father to visit Lebanon with couple's child, even though Lebanon is not a Hague signatory); Long v. Ardestani, 241 Wis. 2d 498, 527, 624 N.W.2d 405 (2001) (allowing father to visit Iran with his four children); Jawad v. Whalen, 326 Ill. App.3d 141, 759 N.E. 2d 1002 (2001) (allowing father to visit Iraq with his children); In re Marriage of Al-Zouhayli, 486 N.W.2d 10 (Minn. Ct. App. 1992) (allowing father to visit Saudi Arabia and Syria with his child).

[8] The Long court ultimately affirmed an order allowing a father to take his children to Iran, even where the evidence established that Iran was not a signatory to the Hague Convention, it did not have diplomatic relations with the United States, and the courts of Iran would not recognize an order of a court of the United States – all of which were factors the court considered as part of its calculus. 241 Wis. 2d at 525.

scenario, the purportedly threatened parent should have to demonstrate by a preponderance of the evidence that there is a strong probability that an abduction would occur. See In re Marriage of Al-Zouhayli, 486 N.W.2d 10 (Minn. Ct. App. 1992) (finding that "a strong probability of abduction must be shown by a preponderance of the evidence" because of "the importance of meaningful visitation, and because the allegation of endangerment was based solely on speculation as to what [the father] *might* do"); Susan L. Barone, *International Parental Child Abduction: A Global Dilemma With Limited Relief – Can Something More Be Done?*, 8 N.Y. INT'L L. REV. 95, 118 (1995). Here, the trial court's focus on the worst-case scenario mistook a *possibility* for a *probability.*

This Court should direct lower courts to focus on a particular country's legal procedures and the probability (rather than possibility) of abduction, rather than focus exclusively on whether a parent's ancestral country signed the Hague Convention.

IV. The Best Interests of Mixed Race Children Include Exposing Them to Both Halves of Their Cultural Heritage.

Neither the trial court nor the appellate court considered the importance of exposure to the father's culture when determining the children's best interests.

The best interests of mixed-race children include learning about

both parents' respective cultures. See Fernando v. Nieswandt, 87 Wn. App. 103, 105-06, 940 P.2d 1380 (1997) (affirming trial court's decision to award father visitation rights after expert testified that "a mixed-race child . . . needed to learn about her father's culture as well as her mother's"). While RCW 26.09.184 provides that courts "may" consider the cultural heritage of a child in fashioning a parenting plan, Amici assert that it is fundamentally within a bi-racial child's best interests to be exposed to both parts of his or her cultural heritage. Here, however, the lower courts' errors effectively deprive these children of half their heritage by denying them the right to travel to India to visit their family and experience their culture.

As Amici point out in the Memorandum in Support of the Petition for Review, meaningful contact with family and culture is an essential ingredient for Asians generally, and Indians particularly. Traveling to one's ancestral home helps mixed race children form personal bonds with their extended family and understand their ethnicity. This personal connection is especially important in cases like these where the mixed race children have to rely exclusively on one parent to cultivate their Indian heritage. There is no evidence that exposing these children to their Indian culture would harm them in any way. The lower courts erred by not considering the importance of this factor.

Accordingly, this Court should direct lower courts to consider a mixed race child's ability to learn about both sides of his culture as an *essential component* in determining the best interests of that child.

CONCLUSION

For the reasons stated above, this Court should REVERSE the Court of Appeals and VACATE the trial court's travel restrictions.

RESPECTFULLY SUBMITTED this ___ day of October 2011.

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